IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 2 OF 2004

Mehboob Sayeed
Presently lodged in
Central Jail Aguada,
Goa. ... Petitioner

versus

1. State of Goa
   through Chief Secretary,
   Panaji, Goa.

2. Inspector General of
   Prisons, Collector
   North Goa, Panaji, Goa.

3. Superintendent of Prisons
   Aguada Central Jail,
   Aguada, Goa. ... Respondents

Mrs. Asha A. Desai, Advocate for the Petitioner.

Mr. S. N. Sardessai, Public Prosecutor for the Respondents.

CORAM : P. V. HARDAS, J.

DATE : 29TH JANUARY, 2004.

ORAL JUDGMENT

Rule.

2. Rule made returnable forthwith. By consent of parties, this Petition is taken up for final hearing at the stage of admission.

3. The present Petitioner had earlier filed Criminal Writ Petition No. 27 of 2003 impugning the Order passed by the Inspector General of Prisons, Panaji, Goa, dated 4th July, 2003, declining to release the Petitioner on parole. This Court by its Judgment dated 16th October, 2003, in Criminal Writ Petition No. 27 of 2003, had set aside the Order impugned therein and had directed the Respondents to decide the application of the Petitioner dated 25th May, 2003, afresh. Accordingly, Respondent No.2, Inspector General of Prisons, Panaji, Goa, has by the impugned Order dated 24th November, 2003, rejected the application for parole filed by the Petitioner on the ground that when the matter was enquired into by the Police, it was revealed that the Petitioner, while on bail, had sent "threatening message" to the family members of the victim/deceased in the said crime due to which the family members of the deceased have taken a serious concern and are objecting for his release on parole because the prisoner may commit a similar offence if released on parole.

4. The Petitioner has been convicted by the

Sessions Court at Margao in Sessions Case No.19/97 for an offence punishable under Sections 304(i) and 323 r/w 34 of the Indian Penal Code. The Petitioner was sentenced to undergo Rigorous Imprisonment for 5 years and to pay fine of Rs.2000/- with a default stipulation of Simple Imprisonment for 3 months and Simple Imprisonment for 6 months respectively. According to the Petitioner, he was on bail for more than two years during the pendency of the Appeal in this Court.

5. On 25th May, 2003, the Petitioner applied for grant of parole on the ground that his wife was in the family way and his mother was suffering from various diseases associated with advance age. Since, there was no other relative to look after them, the release on parole was sought for.

6. Mr. S. N. Sardessai, learned Public Prosecutor appearing on behalf of the Respondents has placed on record the Report submitted by the Police Inspector, Maina Curtorim Police Station, dated 19th November, 2003. In the said Report, it is stated that on enquiry being conducted, the relatives of the victim had stated that the Accused while on bail had sent threatening messages asking them to withdraw the case registered against him. A statement of the relative of the deceased is also appended to the Report. In the

said statement a vague reference is made to the fact that the Accused had sent threatening messages asking the relatives of the deceased to withdraw the case pending against him. Apparently, no Report was lodged to the Police regarding the threats extended by the Accused. The statement also does not disclose the exact date on which the alleged threats have been extended. Apparently, since no Report in this behalf was lodged, no application for seeking cancellation of the bail of the Accused was filed. All these factors affect the credibility of what the relatives of the victim have stated regarding the threats extended by the Accused. Such vague and omnibus statement cannot be made on the basis of the rejection of the parole application if otherwise the prisoner is not disentitled to be released on parole.

7. Mrs. Asha A. Desai, learned Counsel appearing on behalf of the Petitioner states that the wife of the Accused has delivered twins and the mother of the Petitioner, because of the advance age is sick and infirm. The Report dated 19th November, 2003, also states that the mother of the Petitioner who is 65 years of age is not keeping "well in health".

8. In view of this, according to me, the Order impugned rejecting the application of the Petitioner

for being released on parole is unsustainable. The Petitioner, according to me, is entitled to be released on parole for 30 days on the following conditions:-

1. The Petitioner be released on parole for 30 days on his executing a Bond in the sum of Rs.10,000/- with one surety in the like amount.

2. The Petitioner on his release shall report to the Maina Curtorim Police Station and thereafter on every third day shall report to the Maina Curtorim Police Station till the expiry of the period of 30 days.

3. The Petitioner, during the period he is released on parole, shall not threaten the relatives of the victim.

9. On the aforesaid terms, Rule is made absolute with no order as to costs.

P. V. HARDAS, J.

RD.